

In re Application of: Ariel PELED et al.
Serial No.: 09/897,013
Filed: July 3, 2001
Office Action Mailing Date: December 31, 2008

Examiner: David Yiuk JUNG
Group Art Unit: 2434
Attorney Docket: 01/22083

REMARKS

Claims 1, 5, 6, 10, 14, 19, 22, 24, and 35 are pending in this case.

Claims 1, 5, 6, 10, 14, 19, 22, 24, and 35 are rejected under 35 U.S.C. §101, and then again under 35 U.S.C. §102 and separately under 35 U.S.C. §103(a).

Claim 1 has been amended herewith.

Rejections under 35 U.S.C. §101

Claims 1, 5, 6, 10, 14, 19, 22, 24, and 35 are rejected under 35 U.S.C. §101.

Claim 1 has been amended to recite a networked system, having elements which are distributed over the network. A computer network is an entity including wires, communication hardware and numerous computers, and therefore is statutory subject matter. The feature of the searching entity being distributed over the network provides the network as a necessary feature of the claim.

The presence of the network in the claim is not mere pre- or post-processing, but is integral to the claim.

Incidentally, Applicants point out that the decision in re Bilsky to which the Examiner refers, clearly states that it refers only to *method* claims. Claim 1 is a *system* claim.

Rejections under 35 U.S.C. §102

Examiner rejects claim 1 under Howe.

Claim 1 has been amended to clarify a distinction over Howe.

Howe was written in 2004 and the Examiner takes a passage which talks about the author's recollection of what happened in 2000.

In this passage the author states that coding began of software that would code and archive the contents of shared folders. The purpose of the archive was to provide a database to service up to 50 million search requests per day.

This passage thus describes the archiving of *stored* material, and allows searchers to find out about what material is being *stored*.

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Claim 1 is now clarified to define that the searching by the search element in the present claim is that of material *being transported*. That is to say the present Application concerns apparatus to catch people in the act of copyright infringement by actually transporting the material.

Howe contains no teaching of searching material being transported. Indeed this would make no sense in light of his determination to create an archive, which is a retrieval system.

Thus claim 1 is believed to be new and inventive in view of Howe, and Howe does not teach or hint at all the limitations of the claim taken in combination..

Rejections under 35 U.C. §103

Irrespective of the priority date issue, Browne fails to teach the searching of *predetermined* material according to *a content definition*, as per the current amendment to claim 1.

Applicants believe that the previous claim definition required the predefinition for the search to be based on the content. Examiner appears to be arguing that the content is predefined in the sense of being that content which is downloaded by the user.

Applicants do not accept the Examiner's reading and believe that he is taking an overly academic approach to understanding the claim. Had the claim said "defined content" then the Examiner's reading would have been correct. "Predefined" however, means that the content is defined in advance.

Nevertheless, in order to facilitate rapid grant of the Application, Applicants are prepared to add to the claim the additional definition of "according to a content definition". This restricts the claim to the case in which the surveillance elements are looking for particular content items and are sent out over the network to identify file sharing networks and identify the actual content that has been predefined, that is it finds out about traffic containing any content that corresponds to pre-entered content definitions.

Thus, as an example, a surveillance element may be set up with a definition say of J.M. Barrie's Peter Pan. It would be sent over the network to find a file sharing system –

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by monitoring passing traffic and then it would check whether the passing traffic emanating from this file sharing system corresponds to its preset definition of Peter Pan.

Browne merely teaches watching the individual users and their personal *downloading activities overall*, "who is downloading what and when". That is to say the implication is that the software picks on a particular user and makes *a complete list of his downloads*, whereas the claim requires that *predetermined material* is searched for, where the predetermination is according to *the nature of the content*. That is to say material that has been predefined, say by the rights owner, is tracked.

Neither Browne nor Howe teach the presently claimed combination of tracking *network traffic* in order to find *which file sharing network* is responsible for sharing *predetermined content items where the definition relates to the nature of the content*.

Claim 1 is thus new and inventive.

General Comments Regarding The Napster file sharing system in the year 2000

Examiner relies on references which relate in retrospect to the monitoring of file-sharing networks in 2000. The first file sharing network to be considered by the Media industry as a serious problem was **Napster**, which, back in 2000, was considered to be the most popular file-sharing network.

Napster as constituted in 2000, and to which the citation refers, was a file sharing system in which references to all files to be shared were stored on *a central server*. It was only *later* (following threats of litigation regarding storage on the central server) that the file sharing systems were modified and distributed file-sharing networks become the main threat.

Thus for this reason as well, the citations do not teach the *distributed* system that is defined by the claims.

The dependent claims are allowable as being dependent on an allowable main claim.

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Prompt notice of allowance is earnestly and respectfully requested.

Respectfully submitted,



Martin D. Moynihan
Registration No. 40,338

Date: April 30, 2009

Enclosure:

- Petition for Extension of Time (One Month)